

MISC. CIVIL APPLICATION NO. 249 OF 1994.

Date of decision: 11.12.1995.

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. P.J. Bhatt, advocate for petitioner.  
Respondent-served.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

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December 11, 1995.

Oral judgment (Per Soni, J.)

Exparte award passed by the Labour Court on 1.1.1992 came to be challenged before this Court (Coram: R.A.Mehta & B.J. Shethna, JJ.) and the said Bench passed the following order:

"Mr. P.J. Bhatt, learned counsel appearing for the respondent agrees that if the full arrears of wages upto

30th November 1993 are paid to the workman unconditionally, the workman has no objection to the matter being remanded to the Labour Court after setting aside the Award dated 1.1.1992. The Award dated 1.1.1992 will stand set aside in respect of the reinstatement on payment as aforesaid and the question of reinstatement and the reference shall be decided afresh in accordance with law. It is further clarified that if the aforesaid condition of deposit and payment is not complied with, there is no setting aside the ex-parte order and this order will be of no effect."

Alleging non-compliance of the said condition, present application for taking necessary action under the Contempt of Courts Act against the respondent is filed.

In affidavit in reply it is made clear that there appears to be a dispute of calculation which may be resolved in the reference pending disposal before the Labour Court or same can be recovered under Section 33 (c) of the Industrial Disputes Act.

This apart, this Court (Coram: R.A.Mehta & B.J. Shethna, JJ.) has taken necessary care in case of non-compliance of the order. It is clear that if the order is not complied with, that is, condition to deposit and payment is not satisfied, the award comes into play and that is required to be executed. Therefore, in our opinion, non-payment of money even if agreed by the respondent-management, does not constitute a contempt of court as it cannot be said to be a wilful disobedience.

This apart, respondent has deposited Rs.45,809/- as per his own calculation and there remains a dispute to be resolved and the same is pending before the Labour Court. In view of this fact, it cannot be said that there can be any disobedience of the order muchless wilful and the case of the petitioner does not fall within the purview of clause (b) of Section 2 of the Contempt of Courts Act. Hence, the application deserves to be dismissed.

In the result, the application is dismissed. Rule discharged. No order as to costs.